CITY OF AUBURN
WASHINGTON

AGENDA BILL APPROVAL FORM

Agenda Subject: Public Hearing – Moratorium	Date: December 30, 2008

Department: Planning, Building and Community	Attachments: Resolution No. 4416	Budget Impact: N/A

Administrative Recommendation:
City Council conduct the public hearing. No further City Council action is necessary. Recommend City Council sustain moratorium as adopted.

Background Summary:

On September 22, 2008, the National Marine Fisheries Service (NMFS) issued a biological opinion on the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program. The NMFS evaluation found that the flood insurance program as currently administered by local governments is in violation of the Endangered Species Act. Development permits issued by local governments for development in the floodplain can be construed as authorizing a "take" of endangered species and their habitat. In a letter from FEMA dated October 21, 2008, one of the suggestions to local governments is to issue a temporary moratorium on floodplain development until FEMA and NMFS finish consulting on the minimum requirements to avoid impacts to endangered species.

The City Council adopted Resolution No. 4416 on November 17, 2008, enacting an initial 6-month moratorium on development in the floodplain. This includes permit applications in review, those ready to issue, and new applications. The City is currently accepting no permit applications for projects in the floodplain. City staff held a public information meeting on this issue at the Parks, Arts, and Recreation Building on December 10, 2008. Over 50 members of the public attended this meeting, which included a short presentation and question and answer session.

The moratorium is in effect for a period of six (6) months, to the 17th day of May, 2009, unless repealed, extended or modified by the City Council at this public hearing and the entry of appropriate findings of fact pursuant to RCW 35A.63.220, provided that the moratorium shall automatically expire upon the effective date of an Ordinance revising the City's requirements for floodplain development as determined by FEMA and NMFS.

It is recommended that City Council sustain this moratorium as adopted by Resolution No. 4416.
L0105-1
O3.10.8

Reviewed by Council & Committees:		Reviewed by Departments & Divisions:	
☐ Arts Commission	COUNCIL COMMITTEES:	☐ Building	☐ M&O
☐ Airport	☐ Finance	☐ Cemetery	☐ Mayor
☐ Hearing Examiner	☐ Municipal Serv.	☐ Finance	☐ Parks
☐ Human Services	☐ Planning & CD	☐ Fire	☒ Planning
☐ Park Board	☐ Public Works	☐ Legal	☐ Police
☐ Planning Comm.	☐ Other _____	☒ Public Works	☐ Human Resources
		☐ Information Services	

Action:
Committee Approval: ☐Yes ☐No
Council Approval: ☐Yes ☐No   Call for Public Hearing __/__/__
Referred to _____ Until ____/___/____
Tabled _____ Until ___/___/____

Councilmember: Norman	Staff: Baker
Meeting Date: January 5, 2008	Item Number: II.A.1

AUBURN * MORE THAN YOU IMAGINED

RESOLUTION NO. 4 4 1 6

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, CREATING AND ESTABLISHING
A MORATORIUM FOR AN INITIAL SIX (6) MONTH PERIOD
OF TIME ON THE FILING, RECEIPT, AND APPROVAL OF
APPLICATIONS FOR DEVELOPMENT WITHIN AREAS OF
THE CITY LOCATED WITHIN, IN WHOLE OR IN PART,
DESIGNATED 100 YEAR FLOODPLAINS AS DETERMINED
BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
AND SETTING A PUBLIC HEARING FOR THE 5th DAY OF
JANUARY, 2009, TO CONSIDER THE MORATORIUM ON
THE FILING, RECEIPT AND APPROVAL OF APPLICATIONS
FOR DEVELOPMENT WITHIN FLOODPLAINS

WHEREAS, Section 35A.63.220 of the Revised Code of Washington

(RCW) authorizes the City Council to establish a moratorium for an initial period

of six months, subject to subsequent extensions, approved by separate council

action, provided that a subsequent public hearing is held on the moratorium

within at least sixty (60) days of its adoption, at which time findings of fact could

be made; and

WHEREAS, the City of Auburn has territory within its corporate

boundaries that is located within both the current and the proposed Federal

Emergency Management Agency (FEMA) designated 100 year floodplains; and

WHEREAS, FEMA and the National Marine Fisheries Service (NMFS)

have collaborated on a position paper that seeks to prevent continued

degradation of existing floodplain, and to promote low impact development in

floodplain areas of the region that could effect endangered species; and

WHEREAS, the guidelines and ultimate responses and strategies to address the FEMA/NMFS concerns have not yet been fully developed and implemented; and

WHEREAS, FEMA and NMFS have taken the position that if a permitting agency, such as the City of Auburn, grants permits in floodplain areas within its boundaries that are later determined to adversely impact the floodplains and/or endangered species, the permitting agency will be liable for the resulting "take" on endangered species; and

WHEREAS, FEMA and NMFS recommend that jurisdictions that have territory within the floodplains employ moratoria to preserve and protect endangered species and to avoid the take of such endangered species through development that does not meet their intended goals of low impact development; and

WHEREAS, even though the City has implemented and enforced FEMA's minimum standards as they existed prior to this recent NMFS biological opinion, NMFS has determined that FEMA's standards are not sufficient to avoid the taking of endangered species; and

WHEREAS, it is appropriate for the City to assure that any development that does occur within floodplains within the City of Auburn develops in a way that meets the requirements of FEMA and NMFS to preserve and protect endangered species, and that a moratorium to assure such compliance is appropriate until the regulations have been developed which would implement the strategies of protecting the endangered species in floodplain development.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, HEREBY RESOLVES as follows:

Section 1. Establishment of Moratorium. The City Council hereby establishes a moratorium for an initial period of six (6) months on the filing, receipt and approval of applications for development within areas of the City located within, in whole or in part, identified 100-year floodplains as depicted in the most currently approved floodplain maps as published by FEMA. Provided, that applications for development within floodplain areas of the City may be filed, received and approved during the term of this moratorium if the applicants can establish to the City's satisfaction that they are able to meet the requirements of FEMA and NMFS in developing their property in a way that adequately protects the endangered species and that meets the FEMA and NMFS concerns for floodplain development.

Section 2. Terms of Moratorium. The moratorium as established and created by this resolution shall be effective on the date hereof and shall continue to be in effect for a period of six (6) months thereafter unless repealed, extended or modified by the City Council after a subsequent public hearing and the entry of appropriate findings of fact pursuant to RCW 35A.63.220. Provided, that the moratorium shall automatically expire upon the effective date of an ordinance establishing and implementing strategies to meet the FEMA/NMFS floodplain development/endangered species concerns.

Section 3. Public Hearing Scheduled. That a public hearing on the proposal to impose a moratorium on the filing, receipt and approval of
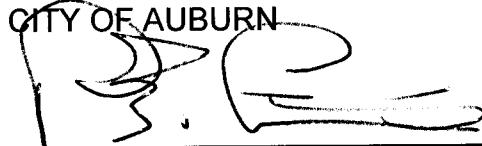
applications for development within the City located within, in whole or in part, 100-year floodplains as determined by FEMA, shall be set for 7:30 p.m. or as soon thereafter as the matter may be heard, on the 5th day of January, 2009, at the City of Auburn City Council Chambers, Auburn City Hall, 25 West Main Street, Auburn, Washington.

Section 4. <u>Administrative Implementation.</u> That the Mayor of the City of Auburn is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 5. <u>Effective Date.</u> That this Resolution shall take effect and be in full force upon passage and signatures hereon.
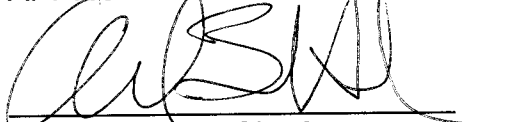
Dated and Signed this _17th_ day of _November_, 200_8_.

CITY OF AUBURN

_____
PETER B. LEWIS
MAYOR

ATTEST:

_____
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

_____
Daniel B. Heid, City Attorney